REMARKS

The examination of the above-identified reissue application is acknowledged.

1 Removal of the Continuation-in-Part Basis of U.S. Patent No. 6,056,716

According to the Office Action, the reissue Declaration was defective on the grounds that 35 U.S.C. 251 prescribes the effective reissue on the patent term by stating that "the Director shall...reissue the patent...for the unexpired term of the original patent." The description of the error set forth in the "Reissue Application Declaration by the Inventor" no longer states that the term of the patent is to be extended by the reissue application. As stated in MPEP §1405(b)(2), "The Examiner should not make a rejection under 35 U.S.C. 251 based on lack of an appropriate error for reissue and failure to comply with 37 C.F.R. 1.175."

By the present reissue application, the patentee is attempting to remove the following information stated in box "[63]" of U.S. Patent No. 6,056,716. The foregoing reads as follows:

> [63] Continuation-in-part of application No. 08/253,416, Jun. 3, 1994, Pat. No. 5,569,190, which is a continuation-in-part of application No. 07/818,235, Jan. 8, 1992, Pat. No. 5,318,522, which is a continuation-in-part of application No. 07/336,636, Apr. 7, 1989, Pat. No. 5,080,648, which is a continuation of application No. 07/059,620, Jun. 8, 1987, abandoned.

The latter material was included in the patent application simply to show the chain of development of the invention claimed in U.S. Patent No. 6,056,716. These are based on the Declaration Under 35 U.S.C. 120 as originally filed. That material should have been described in the "Description of the Prior Art" portion of the '716 patent.

Reissue applications, since at least 1968, have been very remedial in their application. For example, in *Brenner v. State of Israel*, 400 F.2d 789, 158 U.S.P.Q. 584 (D.C. Cir. 1968), the Court

of Appeals for the D.C. Circuit stated: "In keeping with the remedial nature of the statute, reissue has been sanctioned on several occasions to correct defects in patents that were not the result of errors in the specification, drawings or claims." "...a change in the language of the patent's specification, drawings or claims is not an absolute prerequisite for correction of a defective, inoperative or invalid patent under 35 U.S.C. 251 if it be established that the error arose without any deceptive intention."

The present situation does not involve a chain of applications where an invention was disclosed in an early application and an attempt is being made to claim that disclosure in a later application as occurred, for example, in *Dart Industries, Inc. v. Banner*, 200 U.S.P.Q. 656 (D. D.C. 1978), *rev'd on other grounds*, 636 F.2d 684, 207 U.S.P.Q. 272 (D.C. Cir. 1980), where the reissue applicant was allowed to file a reissue application and use a §120 Declaration, since the patent itself was held to be "inoperative" within the meaning of 35 U.S.C. §251. Rather, the earlier cases which were included in the 35 U.S.C. 120 Declaration did not even disclose or suggest the invention which is covered by the claims in U.S. Patent No. 6,056,716. These claims essentially are directed to an injecting apparatus having a perforator for making a perforation in a body having an effective length for selectively reaching the dermis or subcutaneous layer (designated as being less than 12.7 mm), the perforator having a slanted end for anchoring the perforator in the body being injected. This invention is shown in Figs. 9B, 9BB, 9C and 9E-9H, which figures (and the descriptions thereof) are not disclosed or suggested in any of the four cases set forth in the Declaration under 35 U.S.C. 120. As noted above, those cases, if mentioned at all, should have been in the "Description of the Prior Art" portion of application No. 08/738,303 from which U.S. Patent 6,056,716 issued.

A failure to grant a reissue patent based on the above-identified application would be most unfair to the applicants and their assignee. As noted above, the reissue statute, 35 U.S.C. 251, is

liberally construed. As noted by Judge McGuire in *Sampson v. Commissioner of Patents and Trademarks*, 195 U.S.P.Q. 136 (D. D.C. 1976), in a case where an applicant filing a §120 affidavit failed to insert the filing date of the prior patent applications in the chain of applications, made the following statement:

> The language of the statute and cases under it seem to indicate that plaintiff's predicament is the very type of situation for which this section provides a remedy. Had omissions occurred in the application upon which the patent issued, there is little question that the reissue patent would be granted.

For the foregoing reasons, it is respectfully requested that the patents cited in box [63] of U.S. Patent No. 6,056,716, and which were noted in the §120 Declaration, be removed and that the §120 Declaration be withdrawn or canceled.

2. Amendment to the Claims

The claims have been amended by this reissue application to correct minor typographical or printing errors in claims 3 and 18 and to add new claims 19 and 20. Claims 19 and 20 both depend from claim 1 and define the pressure of the jet stream generated by the fluid supplying device set forth in claim 1. These claims are narrower than claim 1 and find support in the specification at column 16, lines 43-46. Claims 21 and 22 also depend from claim 1 and define a marker or legend to identify which of the bodies have received an injection and also what type of injection. These claims are also narrower than claim 1, and support in the specification is found at column 4, lines 11-14, and column 7, lines 3-16.

The Examiner is invited to telephone the undersigned if a telephone discussion of this

application would expedite its prosecution.

Respectfully submitted,

By: _____
D. Peter Hochberg
Reg. No. 24,603

DPH/ck

D. Peter Hochberg Co., L.P.A.
1940 E. 6th Street - 6TH Floor
Cleveland, Ohio 44114
Phone: (216) 771-3800 / Fax: (216) 771-3804
e-mail: DPHDOCKET@aol.com

CERTIFICATE OF MAILING UNDER 37 C.F.R 1.8(a)

I hereby certify that this paper (along with any paper referred to as being attached hereto or transmitted herewith) is being deposited with the United States Postal Service as first class mail in an envelope addressed: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: 6 / 14 / 2006

By: Christine Kotran
Christine Kotran